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6
 7 UNITED STATES DISTRICT COURT
 NORTHERN DISTRICT OF CALIFORNIA

8
 9 HAO CHEN

CV 08 Case No.: 2396

2396

10 Plaintiff,
 11 vs.
 12 MICHAEL CHERTOFF, Secretary of the
 Department of Homeland Security;
 13 ROBERT S. MUELLER,
 Director of Federal Bureau of Investigation
 14 Defendants.

PETITION FOR HEARING ON
 NATURALIZATION APPLICATION
 UNDER 8 U.S.C. § 1447(B)

16 COMES NOW HAO CHEN, Plaintiff in the above-styled and numbered cause, and for
 17 cause of action would show to the Court the following:

18 1. This action is brought for a hearing to decide Plaintiff's naturalization application due to
 19 Defendants' failure to adjudicate the application within 120 days after the first examination in
 20 violation of the Immigration and Nationality Act ("INA") § 336(b) and 8 U.S.C. §1447(b).

21 PARTIES

22 2. Plaintiff HAO CHEN, a native and citizen of the People's Republic of China, is a lawful
 23 permanent resident of the United States. On August 1, 2005, Plaintiff's Form N-400, Application
 24 for Naturalization was received by the U.S. Immigration and Naturalization Service, or U.S.C.I.S.
 25 (Exhibit 1). Plaintiff was interviewed for his naturalization application on December 31, 2005
 26 (Exhibit 2). Defendants have failed to make a decision on the application within 120 days after
 27 the examination.

28 3. Defendant Michael Chertoff is the Secretary of the Department of Homeland Security

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1 (DHS), and this action is brought against him in his official capacity. He is generally charged with
 2 enforcement of the Immigration and Nationality Act, and is further authorized to delegate such
 3 powers and authority to subordinate employees of the DHS. 8 U.S.C. §1103(a); 8 C.F.R. § 2.1.

4 4. Defendant Robert S. Mueller, III, is Director of the Federal Bureau of Investigations (FBI),
 5 the law enforcement agency that conducts security clearances for other U.S. government agencies,
 6 such as the Department of State. As will be shown, Defendant has failed to complete the security
 7 clearances on Plaintiff's cases.

8 JURISDICTION

9 5. Jurisdiction in this case is proper under the INA § 336(b) and 8 U.S.C. §1447(b). Relief is
 10 requested pursuant to said statutes.

11 VENUE

12 6. Venue is proper in this court, pursuant to 8 U.S.C. §1447(b), in that Plaintiff may request a
 13 hearing on the matter in the District where Plaintiff resides.

14 CAUSE OF ACTION

15 7. Plaintiff is a lawful permanent resident of the United States. On August 1, 2005,
 16 Plaintiff's Form N-400, Application for Naturalization was received by the U.S. Immigration and
 17 Naturalization Service, or U.S.C.I.S. (**Exhibit 1**). Plaintiff was interviewed for his naturalization
 18 application on December 13, 2005 (**Exhibit 2**). Defendants have failed to make a decision on the
 19 application within 120 days after the examination. Plaintiff's Application for Naturalization has
 20 now remained un-adjudicated for almost 29 months from the date of the interview.

21 8. Defendants have sufficient information to determine Plaintiff's eligibility pursuant to
 22 applicable requirements.

23 9. Defendants, in violation of 8 U.S.C. § 1447 (b), have failed to make a determination on
 24 Plaintiff's naturalization application within the 120-day period after the date of examination.

25 PRAYER

26 10. WHEREFORE, in view of the arguments and authority noted herein, Plaintiff
 27 respectfully prays that the Defendants be cited to appear herein and that, upon due consideration,
 28 the Court enter an order adjudicating the naturalization application. In the alternative, the Court

1 may remand requiring Defendants to immediately adjudicate Plaintiff's naturalization application.
2 In addition, Plaintiff requests an award of reasonable attorney's fees under the Equal Access to
3 Justice Act and such other relief at law and in equity as justice may require.

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5 Dated: May 7, 2008

Respectfully submitted,

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8 Justin X. Wang, Esq.
9 Attorney for Plaintiff
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2 **LIST OF ATTACHMENTS**
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<i>Exhibit</i>	<i>Description</i>
1	N-400 Receipt Notice
2	N-652, Naturalization Interview Results

Ex. 1

Department of Homeland Security
U.S. Citizenship and Immigration Services

I-797C, Notice of Action

Receipt Category N400 Application For Naturalization	RECEIVED DATE July 25, 2005	PRIORITY DATE July 25, 2005	NOTICE DATE August 01, 2005
APPLICATION NUMBER LIN-000805336			INS #/ A 075 678 425
APPLICANT NAME AND MAILING ADDRESS HAO CHIEN 14976 NW DEERFOOT LANE PORTLAND OR 97229			PAGE 1 of 1
PAYMENT INFORMATION:			
		Single Application Fee: Total Amount Received: Total Balance Due:	\$390.00 \$390.00 \$0.00
<p>The above application has been received by our office and is in process. Our records indicate your personal information is as follows:</p> <p>Date of Birth: April 04, 1964 Address Where You Live: 14976 NW DEERFOOT LANE PORTLAND OR 97229</p> <p>Please verify your personal information listed above and immediately notify our office at the address or phone number listed below if there are any changes.</p> <p>You will be notified of the date and place of your interview when you have been scheduled by the local INS office. You should expect to be notified within 180 days of this notice.</p> <p style="text-align: right;">Officer : JF 12/12</p> <p>If you have any questions or comments regarding this notice or the status of your case, please contact our office at the below address or call Customer Service number. You will be notified separately about any other cases you may have filed.</p> <p>If you have other questions about possible immigration benefits and services, filing information, or INS forms, please call the INS National Customer Service Center (NCSC) at 1-800-375-5283. If you are hearing impaired, please call the NCSC TDD at 1-800-767-1833.</p> <p>If you have access to the Internet, you can also visit INS at www.ins.usdoj.gov. Here you can find valuable information about forms and filing instructions, and about general immigration services and benefits. At present, this site does not provide case status information.</p> <p>INS Office Address: U.S. IMMIGRATION AND NATURALIZATION SERVICE PO BOX 87100 LINCOLN NE 68501-87100</p> <p>INS Customer Service Number: (800) 375-5283</p> <p>APPLICANT COPY</p>			

Ex. 2

Department of Homeland Security
U.S. Citizenship and Immigration Services

N-652, Naturalization Interview Results

Att# 75 678 425

JF

On 12\13\05, you were interviewed by USCIS officer _____.

You passed the tests of English and U.S. history and government.

You passed the tests of U.S. history and government and the English language requirement was waived.

USCIS has accepted your request for a Disability Exception. You are exempted from the requirement to demonstrate English language ability and/or a knowledge of U.S. history and government.

You will be given another opportunity to be tested on your ability to _____ speak/_____ read/_____ write _____ English.

You will be given another opportunity to be tested on your knowledge of U.S. history and government.

Please follow the instructions on Form N-14.

USCIS will send you a written decision about your application.

You did not pass the second and final test of your _____ English ability/_____ knowledge of U.S. history and government. You will not be rescheduled for another interview for this Form N-400. USCIS will send you a written decision about your application.

A) _____ Congratulations! Your application has been recommended for approval. At this time it appears that you have established your eligibility for naturalization. If final approval is granted, you will be notified when and where to report for the Oath Ceremony.

B) _____ A decision cannot yet be made about your application.

It is very important that you:

Waiting for security clearance only

Notify USCIS if you change your address

Come to any scheduled interview.

Submit all requested documents.

Send any questions about this application in writing to the officer named above. Include your full name, Alien Registration Number (Att#), and a copy of this paper.

Go to any Oath Ceremony that you are scheduled to attend.

Notify USCIS as soon as possible in writing if you cannot come to any scheduled interview or Oath Ceremony. Include a copy of this paper and a copy of the scheduling notice.

NOTE: Please be advised that under section 336 of the Immigration and Nationality Act, you have the right to request a hearing before an immigration officer if your application is denied, or before the U.S. district court if USCIS had not made a determination on your application within 120 days of the date of your examination.